Automobile Products of India Employees' Union

Vs

Association of Engineering Workers, Bombay and Others

Civil Appeals Nos. 1597-98 of 1988

(Kuldip Singh, P. B. Sawant JJ)

27.03.1990

JUDGMENT

SAWANT, J. -

1. The present appeals arise out of a battle for recognition between the rival trade unions in proceedings under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act').

2. Respondent 4-Company has two factories, one at Bhandup, Bombay employing about 1700 workers and the other at Aurangabad employing about 1000 workers. Respondent 1-Union, viz., the Association of Engineering Workers, Bombay obtained a certificate of recognition from Industrial Court, Thane under Section 12 of the Act, on April 7, 1977 for the Company's undertaking at Bhandup. While respondent 1-Union was acting as such recognised union, many of the workers claimed that they had resigned from the said Union and formed a new union called the Automobile Products of India Employee's Union which is the appellant-Union and registered it on January 7, 1981 under the Trade Unions Act, 1926. On October 9, 1981, the appellant-Union made an application to the Industrial Court, Thane under Section 13(1)(ii) of the Act for cancellation of the recognition of respondent 1-Union on the ground that the latter's membership in the Bhandup undertaking had fallen below 30 per cent of the total strength of workmen in that undertaking for the preceding six months. In its reply dated November 16, 1981, respondent 1-Union refuted the allegation in the application and contended that its membership was more than 30 per cent for the relevant period. The appellant-Union on March 1, 1982 submitted yet another application for cancellation of recognition of respondent 1-Union - this time under Section 13(1)(i) of the Act alleging that the recognition was obtained by respondent 1-Union by misrepresentation and/or fraud, and that it was granted recognition also by mistake. The Industrial Court rendered the relief in favour of the appellant-Union. However, the said decision was set aside by the High Court and the decision of the High Court was upheld by this Court. Here ended the first skirmish.

3. The appellant-Union thereafter started the second battle - this time for its own recognition under Section 14 of the Act and the present appeals are an outcome of the said proceedings. On July 29, 1982, the appellant-Union filed an application under Section 14 of the Act for being registered itself as a recognised union in place of respondent 1-Union on the ground that it had the largest membership of the workers in the Bhandup undertaking, viz., 1036 out of a total of 1700 workers. i.e., about 69 per cent of the total strength. Respondent 1-Union in its reply of October 7, 1982 contested the appellant-Union's claim and pleaded that it had a membership of about 1400 workers. Both the appellant-Union and respondent 1-Union furnished with their pleadings the details of their membership. On August 19, 1985, the appellant-Union made an application to the Industrial Court

to hold an inquiry under Section 12(2) of the Act by directing the investigating officer to verify the membership of both the unions. On September 5, 1985, the Industrial Court gave directions to the Investigating Officer appointed under the Act to assist the court, to investigate the memberships of both the unions.

4. While the Investigating Officer was in the process of verifying the memberships of the two unions, suggestions were made for deciding by secret ballot as to which of the Unions commanded the majority. As per the suggestion, respondent 1-Union on December 19, 1985 submitted a draft proposal to the Industrial Court as follows :

> 1. The issue pertaining to recognition of any of the unions be decided by secret ballot and the Investigating Officer be directed to conduct the same ballot.
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> 2. The union which would have the majority of the votes would be treated as recognised trade union and the one which fails to get the majority would not raise any technicality or objection.
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> 3. The union which thus fails to secure majority in the ballot would raise no objection for the period of three years to the union thus declared as the recognised union.

The appellant-Union also submitted its draft proposal, at the same time, in more or less the same terms. On the same day, i.e., December 19, 1985, the Industrial Court passed an order directing the Investigating Officer to hold a secret ballot in the premises of the Company within 30 days from the date of the order. The employees who were entitled to vote in the ballot were those who were on the rolls of the Company on July 1, 1985, those who joined employment of the Company thereafter being disentitled to do so. Accordingly, a secret ballot was held on January 4, 1986. The result of the ballot showed that in all 1585 workers voted, but only 1578 ballot papers were valid. The appellant-Union secured 798 votes whereas respondent 1-Union secured 780 votes. The Investigating Officer submitted his report to the Industrial Court on January 21, 1986. On January 30, 1986, respondent 1 submitted its objections contending that the cut-off date of July 1, 1985 was not correct as the employees who were in employment of the Company and whose services were intermittently interrupted were not given an opportunity to exercise their votes, and that there should have been a proper notification with regard to the date of voting so that the employee who were away could have exercised their votes. On February 10, 1986, the Industrial Court passed an order granting the recognition to the appellant-Union in place of respondent 1-Union, under Section 14 of the Act after disposing of the objections raised by the first respondent Union. The Industrial Court held that since there was an agreement between the two unions, the procedure adopted to grant recognition to the union under the Act was a valid one. The Industrial Court also held that there was no substance in the objections of the respondent 1-Union that by treating July 1, 1985 as the cut-off date, the workers who were otherwise entitled to vote were deprived of their right to vote and also that the notice of the ballot which was given to the workers was proper one. The Industrial Court further granted the request of the appellant-Union for cancellation of the recognition of the respondent-Union under Section 13(1)(vii) of the Act as a consequence of the recognition of the appellant-Union. On February 11, 1986, the Industrial Court granted a certificate of recognition to the appellant-Union under Section 14 of the Act.

5. Against the said decision, two writ petitions were filed in the Bombay High Court under Article 227 of the Constitution of India, one, viz., Writ Petition No. 1409 of 1986 by two workers who are

members of the first respondent-Union and the other, viz., Writ Petition No. 1776 of 1986 by respondent 1-Union. In both the petitions, it was alleged that the Industrial Court had violated the provisions of the Act relating to the grant of recognition of the Union by adopting a procedure which was not sanctioned by it and which was, therefore, illegal and invalid. Reliance was placed for this purpose on a decision of the Bombay High Court in Maharashtra General Kamgar Union, Bombay v. Mazdoor Congress, Bombay, (1983 Mah LJ 147). The appellant-Union contested both the petitions contending that the petitioners there were estopped from challenging the procedure which was adopted by the Industrial Court by consent of the respondent 1-Union. The High Court by its impugned decision allowed both the writ petitions and set aside the order of the Industrial Court mainly relying upon its earlier decision in Maharashtra General Kamgar Union, Bombay case (1983 Mah LJ 147). The present appeals are directed against the impugned decision passed in both the said writ petitions.

6. What, therefore, falls for our consideration in these appeals is whether the procedure adopted by the Industrial Court for granting recognition to the appellant-Union was illegal. To appreciate the answer, it is necessary first to appreciate the object and the scheme of the Act. As has been stated in the preamble of the Act, the State Government had appointed a committee called the "Committee on Unfair Labour Practices" for identifying certain activities of employers and workers and their organisations which should be treated as unfair labour practices and for suggesting actions to be taken against the employers and employees or their organisation for engaging in such unfair labour practices. The Government, after considering the report of the Committee, was of the opinion that to deal with the unfair labour practices, it was necessary, among other things, to provide for the recognition of trade unions for facilitating collective bargaining, and to state their rights and obligations to confer certain powers on them and to provide for certain consequences for indulging in unfair labour practices.

7. It is further a common knowledge that although since long there was a strong demand from some sections for recognising the bargaining agent of the workmen by a ballot, secret or otherwise, the National Labour Commission did not countenance it for certain obvious, reasons. It was felt that the elective element would introduce unhealthy trends which would be injurious to the trade union movement, to industrial peace and stability endangering the interest of the workers, the employers and the society as a whole. It was feared, and from what has become almost a normal feature today, we can say rightly, that the elective element will encourage the growth of mushroom unions just on the eve of election outbidding each other in promising returns to the workers merely to assert supremacy, and unmindful of the health of the industry leading eventually to unwarranted industrial strife, stoppage of production and even closure of the establishment with a consequent loss of production and employment. It was, therefore, thought prudent in the interest of stable industrial relations and industrial peace to evolve a mechanism whereby the bargaining agent on behalf of the workers will have a durable stability as such agent, with a guarantee of uninterrupted loyalty of its members and an unquestionable representative character over a certain period of time. That is why the concepts such as "recognised union" or "representative union" emerged and along with it the machinery to determine it. The mechanism necessarily involved a process by which the workers who claimed that they were speaking through their bargaining agent had the responsibility to maintain their support to it over a reasonable period of time. This could be ensured by them by continuing their membership of the union concerned over a period ensured that their association with the bargaining agent was of a steady and durable character and their allegiance and loyalty to it were not of a fleeting moment but were born of a proper evaluation of all facts. It is in the light of this background that we have to examine the scheme of the Act so far as it relates to the recognition and derecognition of the Unions.

8. Chapter III of the Act deals with the recognition of unions, whereas Chapter IV deals with their obligations and rights. Chapter VI deals, among other things, with unfair Labour practices on the part of the recognised unions and Chapter VII gives powers to courts to declare certain acts of recognised unions a unfair labour practices. Chapter VIII gives to the courts the power to punish and Chapter IX, to impose penalty on the recognised unions. The privileges given to the recognised unions and the obligations and responsibilities cast on them are also considerable.

9. Chapter III which deals with the recognition of unions makes it clear in Section 10 that the said chapter shall apply to every undertaking where fifty or more employees are employed, or were employed on any day of the preceding 12 months. If the number of employees employed in the undertaking at any time falls below 50 continuously in a period of one year, the chapter ceases to apply to such undertaking. Section 11 of the chapter then states the procedure for recognition of union. A union which is desirous of being registered as a recognised union for any undertaking has to make an application to the Industrial Court for the purpose. However, for making such application, the union must have not less than 30 per cent of the total number of employees in that undertaking as its members for the whole of the period of six calendar months immediately proceeding the calendar month in which it makes the application. The Industrial Court then has to dispose of the application as far as possible within three months from the date of the receipt of the application if all the concerns of the undertaking are situated in the same local area; and in any other case, within four months.

10. Section 12 then lays down the manner in which the Industrial Court will proceed to enquire into the application and grant recognition. On receipt of the application, the Industrial Court has to make a preliminary scrutiny of it to find out that it is in order. The Court then has to cause a notice to be displayed on the notice board of the undertaking for which the recognition is sought, stating therein that the court intends to consider the said application on a date specified in the notice, and also calling upon the other union or unions, if any, in the undertaking as well as the employers and employees affected by the proposal for recognition, to show cause within a prescribed period as to why recognition should not be granted to the applicant-Union. If after considering the objections, if any received, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the appellant-Union satisfies the conditions stated in Section 11, viz., among other things, that it has a membership of not less than 30 per cent for the relevant period and that it also satisfied the conditions which are specified in Section 19 of the Act, the court grants recognition to the applicant-Union and issues a certificate of such recognition to it. On the other hand, if the court comes to the conclusion that any of the other unions has the largest membership of employees and the said other union has notified to the court its claim to be registered as a recognised union and if that other union also satisfies the requisite conditions of Sections 11 and 19 of the Act, the Court has to grant recognition to the said other union. It is necessary at this stage to state the conditions laid down in Section 19 which are necessary to be complied with by a union for recognition. Section 19, which appears in Chapter VI dealing with the obligations and rights of recognised unions, lays down that the union which seeks recognition under the Act has to provide in its rules the following matters, and those matters have to be duly observed by it, viz., (i) the membership subscription of the union should not be less than fifty paise per month; (ii) the Executive Committee of the union must meet at intervals of not more than three months; (iii) all resolutions passed by the Executive Committee or the general body of the union have to be recorded in a minute book kept for the purpose; and (iv) the union's accounts have to be audited at least once in each financial year by an audited appointed by the State Government.

11. Section 12 then states that at any time there shall not be more than one recognised union in

respect of the same undertaking. The section also enjoins upon the court not to recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees but is made in the interest of the employer and to the prejudice of the interest of the employees. So also the section mandates the court not to recognise any union if at any time within six months immediately preceding the date of the application for recognition, the applicant-Union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under the Act.

12. Section 13 provides for cancellation of the recognition of the union and suspension of its rights as a recognised union. It states that if the Industrial Court is satisfied after holding an enquiry in the matter that :

(i) the union was recognised under mistake, misrepresentation or fraud; or

(ii) the membership of the union has for a continuous period of six calendar months fallen below the minimum required under Section 11 for its recognition, viz., 30 per cent of the total strength of the employees; or

(iii) the recognised union has, after its recognition, failed to observe the conditions specified in Section 19; or

(iv) the recognised union is not being conducted bona fide and is being conducted in the interest of employer to the prejudice of the interest of the employees; or

(v) it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under the Act; or

(vi) its registration under the Trade Unions Act, 1926 is cancelled; or

(vii) another union has been recognised in place of the union recognised under the said chapter, it would cancel its recognition.

The Industrial Court is also given the power to suspend the rights of the recognised union for some specified period and it may not proceed to cancel the recognition, if it is satisfied that the former course is, in the circumstances, proper one.

13. Section 14 with which we are concerned then lays down the procedure for recognition of other union when there is already a recognised union in the field. It states that any union can make an application for being registered as a recognised union in place of a recognised union which is already registered as such for the undertaking. Such other union can make an application on the ground that it has the largest membership of employees employed in the undertaking. The conditions precedent to making such application, however, are that :

(i) a period of at least two years must have elapsed since the day of the registration of the recognised union;

(ii) a period of one year should have elapsed since the date of disposal of the previous application for recognition of such union;

(iii) the union must have satisfied the conditions necessary for recognition specified

under Section 11; and in addition,

(iv) its membership during the whole of the period of six calendar months immediately preceding the calendar month in which such application is made must have been larger than the membership of the recognised union;

(v) the provisions of Section 12 (which also include the conditions specified in Section 19), are satisfied.

14. If, however, the court comes to the conclusion that any of the other unions has the largest membership of employees and such other union has also notified to the court its claim to be registered as a recognised union and that such other union also satisfied the necessary conditions, the court will grant recognition to the other union.

15. Section 15 provides for re-recognition of the union whose recognition has been cancelled on the ground that it was recognised under a mistake or on the ground that its membership had for a continuous period of six calendar months fallen below the minimum required under Section 11, viz., below 30 per cent. Such an application can be made by the derecognised union after three months from the date of its derecognition. On such application being made, the provisions of Sections 11 and 12 referred to above would apply to it as they applied to an application made for the union's initial recognition. However, this section also makes it clear that if the recognition of the union had been cancelled on any other ground, it cannot apply for re-recognition within a period of one year from the date of such derecognition save with the permission of the court.

16. Section 16 states that even if the recognition of union is cancelled, it will not relieve the union or any of its members from any penalty or liability incurred under the Act prior to such cancellation. Section 18 provides for recognition of unions for more than one undertaking. Section 20 which appears along with Sections 19, 21 and 23 in Chapter IV dealing with the obligations and rights of recognised unions, among other things, deals with the rights of a recognised union and of such officers and members of the office staff and members of the recognised union, as may be authorised by or under rules made by the State Government. Those rights include the right :

(a) to collect sums payable by members to the union on the premises, where wages are paid to them;

(b) to put or cause to be put up a notice-board on the premises of the undertaking in which its members are employed and to affix or cause to be affixed notice thereon;

(c) for the purpose of the prevention or settlement of industrial disputes -

(i) to hold discussions on the premises of the undertaking with the employees concerned, or its members.

(ii) to meet and discuss with the employer or any person appointed by him in that behalf the grievances of employees;

(iii) to inspect, if necessary, any place in the undertaking where any employee is employed;

(d) to appear on behalf of any employee or employees in any domestic or

departmental enquiry.

17. The section also makes it clear that it is only the recognised union, when there is one, which shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under Section 3 of the Industrial Disputes Act, 1947 and it is only the recognised union which shall have the right to represent in certain proceedings under the said Act, and that the decisions arrived at or order made in such proceedings shall be binding on all the employees in such undertaking, and to that extent the provisions of the said Act shall stand amended. Section 21 then states that when there is a recognised union, no employee in the undertaking shall be allowed to appear or act or allow to be represented in any proceedings relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act except through the recognised union. The only exception to this rule is in the case of the undertakings governed by the Bombay Industrial Relations Act where the representatives of the employees under Section 30 of the Act are given the special privilege. It is not necessary to deal with the other provisions of the Act.

18. It is thus clear that the recognition or derecognition of a union under the Act is not a matter which concerns only the contesting unions or its members. It is a matter of utmost importance to the interests of all the workmen in the undertaking concerned and to the industry and society in general. No union is entitled to be registered as a recognised union under the Act merely because it satisfies membership qualification. The Industrial Court is forbidden from granting recognition to a union whatever its membership, if the Court is satisfied that it is disqualified for reasons mentioned under Section 12(5) and 12(6) or does not satisfy the conditions mentioned in Section 19. A period of two years must further have elapsed since the registration of the recognised union, if there is one, before an application for recognition of a new union is entertained. A union whose recognition is cancelled on the ground specified in clause (ii) of Section 13 cannot make a fresh application for a period of three months, and if its recognition is cancelled on any other ground it cannot make a fresh application for recognition for a period of one year from the date of the cancellation in the latter case without the permission of the court. In addition to the membership qualification, therefore, the Court has also to satisfy itself that the applicant-Union is not disentitled to recognition or to apply for recognition, under the other provisions of the Act.

19. As regards the membership qualification itself, the Act enjoins that for being recognised, the applicant-Union must have firstly a membership of a minimum of 30 per cent of the employees of the undertaking for the whole of the period of at least six calendar months preceding the month in which the application for recognition is made. When the applicant-Union seeks recognition for itself by displacing the existing recognised union, the applicant-Union has, in addition, to satisfy that not only it had 30 per cent of the membership during the six calendar months immediately precediately the calender months in which it made its application but had also a larger membership during the said period than the membership of the recognised union. Even with regard to membership, therefore, what has to be satisfied by the concerned union is not only its minimum qualifying membership but also its competing superiority in it over a continuous specified period. What should further be not lost sight of is the paramount fact that it is the membership of the workmen of the union over a period vouched by the relevant documents and not their vote on a particular day which under the Act gives the union its representative character. It is its representative character determined by such membership that gives a union a right to make the application for recognition. However overwhelming therefore the vote may be in its favour in a ballot, it will not entitle a union to recognition under the Act. The recognition by ballot or by any method other than that laid down in the Act is, therefore, alien to the Act.

20. The facts in the present case would reveal that what was done by the Industrial Court was to permit the registration of the Union as a recognised one by a method which was clearly alien to the Act. The Court in effect allowed the parties to circumvent the provisions of the Act and by adopting a simplistic method directed that whoever commanded a majority of votes of the employees voting on a particular day, would be entitled to the status of the recognised union. In effect, therefore, the Court ignored in particular the mandatory provisions of Section 10, 11, 12, 14 and 19 of the Act. Not only that, but by adopting this method, the Court also failed to find out whether any of those workers who voted were members of any of the two unions at any time including on the day of the ballot. This is apart from the fact that what has to be found is the exclusive membership of the contesting unions continuously over the specified period, the overlapping membership being ignored.

21. The consent of the parties to follow a procedure which is against the mandatory provisions of the Act, cannot cure the illegality. For reasons which we have indicated earlier the legislature did not opt for the ballot as a method for determining the representative character of the union and laid down an elaborate procedure with necessary safeguards, to do so. In the circumstances, to permit the parties by consent to substitute a procedure of their own is in effect to permit them to substitute the provisions of the Act.

22. Hence, we are of the view that the order of the Industrial Court granting recognition under the Act to the appellant-Union by following the method of ballot is prima facie illegal being in breach of the provisions of the Act. The High Court had, therefore, rightly interfered with the said order by relying on its earlier decision in the case of the Maharashtra General Kamgar Union (1983 Mah LJ 147). In the result, the appeals fail and are dismissed. The matter is remanded to the Industrial Court for disposal according to law. It is, however, made clear that if there are any settlements which have been arrived at between the appellant-Union and the respondent-Company, they will be allowed to run their full course. The appellant-Union will not enter into any settlement during the pendency of the present proceedings and if any settlement is to be entered into, it should be done only with the consent of the respondent Union which has not lost its recognition as yet. There will be no order as to costs.

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